

ATTACHMENT 1

SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2025, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as “City”) and TK Elevator Corporation, a Delaware Corporation, whose address of record is 3711 W Swift Avenue, Fresno, CA 93722, (hereinafter referred to as “Contractor”).

WHEREAS, City is undertaking a project to maintain and repair eight (8) hydraulic passenger elevators; and,

WHEREAS, the City of Merced issued a Request for Proposal (“RFP”) for elevator maintenance services on December 6, 2024; it was advertised both in the Merced County Times and on the City’s website. TK Elevator was the only vendor that submitted a proposal in response to the RFP; and,

WHEREAS, Contractor represents that it possesses the professional skills to provide elevator maintenance services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Contractor shall furnish the following services: Contractor shall provide the elevator maintenance services described in Exhibit “A” attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Public Works or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit “A” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Contractor may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall

commence on July 1, 2025 and end on June 30, 2027. City shall have the option to renew this Agreement for three (3) additional one (1) year terms for the additional maximum period of three (3) years ending as of June 30, 2030.

4. **COMPENSATION.** Payment by the City to the Contractor for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Contractor agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Contractor's services rendered under this Agreement, City shall pay Contractor the not to exceed sum of \$2,693.92 monthly, for an annual sum not to exceed \$32,327.04.

5. **METHOD OF PAYMENT.** Compensation to Contractor shall be paid by the City after submission by Contractor of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the City, and Contractor hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONTRACTOR'S BOOKS AND RECORDS.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and

unemployment insurance. Should Contractor desire any insurance protection, the Contractor is to acquire same at its expense.

In the event Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Contractor shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Contractor or Contractor's officers, employees, volunteers, and agents during performance of this Agreement; Contractor shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Contractor or its employees, subcontractors, or agents, or by the quality or character of Contractor's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. **Workers' Compensation Insurance.** Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. **General Liability.**

- (i) Contractor shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Contractor shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Contractor.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Contractor shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. **Automobile Insurance.**

- (i) Contractor shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000)

- per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Contractor.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Contractor shall carry professional liability insurance appropriate to Contractor's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Contractor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for

nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Contractor's insurance policies are not current.

11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a “public works” the Contractor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Contractor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Contractor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Contractor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Contractor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Contractor shall comply with its standard of care regarding all applicable Federal, State, and

municipal laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Contractor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. **WAIVER.** In the event that either City or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
D. Scott McBride
City Manager

ATTEST:

D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 2/7/2025
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

CONTRACTOR
TK Elevator Corporation,
a Delaware Corporation

DocuSigned by:
BY: Robert Preston
AAE4777343424F8...
(Signature)

Robert Preston

(Typed Name)

Its: General Manager
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 62-1211267

ADDRESS: 3100 Interstate North Circle SE #500
Atlanta, GA 30339

TELEPHONE: 818-281-7844

FAX: _____

E-MAIL: rob.preston@tkelevator.com

Elevator Maintenance Service

SCOPE OF SERVICES

The City of Merced hereby requests proposals to service all City owned elevators listed herewith.

Make	Model	Passenger (Hydraulic)	Site	Address	State ID	Monthly Price
A & B Elevator	Relay Logic	1	Police Department	611 22 nd Street	069525	\$ 398.21
US Elevator	Relay Logic	1	Merced Civic Center	678 18 th Street	085780	\$ 352.85
US Elevator	Relay Logic	1	Merced Civic Center	678 18 th Street	085781	\$ 352.84
Westinghouse	Relay Logic	1	Parcade	638 18 th Street	105181	\$ 364.80
Westinghouse	Relay Logic	1	Parcade	638 18 th Street	105182	\$ 398.21
Schindler	Microprocessor	1	Merced Center Parking	1801 M Street W	149297	\$ 370.02
Schindler	Microprocessor	1	Merced Center Parking	1801 M Street W	149298	\$ 370.02
WICO	Relay Logic	1	Lift Station	3156N. HWY 59	146142	\$ 86.97
Total Monthly:						\$ 2,693.92

The following items represent the basic scope of service to be rendered:

CLEAN (remove dirt, lint, excess oil and grease):

- Power units
- Control Equipment (relay panels, selectors, operating switches, etc.)
- Pit Equipment (remove normal accumulation of rubbish)
- Guide Rails and Brackets (brush to remove lint and dust)
- Car Frames (guide shoes, safety parts, etc.)
- Top of Cars and Bottom of Platforms
- Car Door and Gate Openers
- Hoist way Door Equipment

LUBRICATE:

Oil and grease as required, according to manufacturers lubrication schedules. Provide proper lubrication to all items of elevator equipment at intervals recommended by the manufacturer and/or as a result of visual examinations.

- Power Unit (refill tank when necessary-flush and filter)
- Control Equipment (selectors, operation switches and devices, etc.)
- Guide Rails (refill lubricators as often as required)

EXAMINE:

Provide a thorough visual examination of all exposed parts accessible without dismantling components. Examinations are to be performed on a regular scheduled basis at intervals to be established based on use and need. Examinations to be performed by a State of California Certified Competent Conveyance Mechanic.

ADJUST:

Provide all necessary adjustments during regular scheduled examination visits.

Elevator Maintenance Service

REPAIR:

During regular working hours provide necessary major and minor repairs, including labor and parts as required, to the following items:

Control Equipment (relay panels, selectors, operating switches, etc.)
 Car Door and Gate Operators
 Hoist way Door Equipment
 Interlocks
 Leveling Switches (car and hoist way switches and cams)
 Guide Shoes (car roller guides, shoes, gibs, etc.)
 Pit Equipment
 Hydraulic Valves, Pumps, Pump Motors (Power Unit)
 "V" Belt on Power Unit
 Door Motors
 Guide Bearings, Packing and Packing Gland (Hydraulic Seals)

CALLBACK SERVICE:

Provide callback service during regular time hours at no additional charge to the customer.

Overtime shall consist of weekdays 5pm to 8am, and Saturdays. (Hours as recognized by the International Union of Elevator Constructors.)

Double-time shall consist of Sundays and Holidays. (Hours as recognized by the International Union of Elevator Constructors.)

Billing for overtime call backs shall be at the following rates:

Standard 24/25 TKE Billing Rates									
Mechanic	Mechanic OT	Mechanic DT	Helper	Helper OT	Helper DT	Adjuster	Adjuster OT	Team	Team DT
\$672.00	\$1,090.89	\$1,283.40	\$537.60	\$913.92	\$1,075.20	\$756.00	\$1,285.20	\$1,142.40	\$2,570.39

OMNIA – 24/25 TKE Billing Rates (55% Less)									
Mechanic	Mechanic OT	Mechanic DT	Helper	Helper OT	Helper DT	Adjuster	Adjuster OT	Team	Team DT
\$369.60	\$599.99	\$705.87	\$295.68	\$502.66	\$591.36	\$415.80	\$706.86	\$628.32	\$1,413.71

Overtime and double-time shall have two hour minimum for call out.

ITEMS NOT COVERED:

Cosmetic, construction, or ancillary components of the elevator system, including the finishing, repairing, or replacement of the cab enclosure, ceiling frames, panels and/or fixtures, hoist way door panels, door frames, sills, car flooring, floor covering, lighting fixtures, ceiling light bulbs and tubes, main line power switches, breaker(s), feeders to controller, hydraulic elevator jack casing, buried piping, alignment of guide rails, smoke and fire sensors, communication devices, security systems, batteries for emergency lighting and lowering, air conditioners, heaters, ventilation fans and all other items as set forth and excluded in this agreement.

Elevator Maintenance Service

MAINTENANCE FREQUENCY:

No less than twelve (12) maintenance visits per year. Fire recall testing and State of California-required record-keeping shall be completed by elevator service provider.

RESPONSE TIME:

In the event of trapped passenger(s), elevator service provider shall provide a technician on-site in forty-five (45) minutes or less from the time of notification. In the event the elevator requires repair, but is unoccupied, then response time shall be within four (4) hours or less.

ON-LINE RECORD-KEEPING:

Elevator service provider shall provide Purchaser with on-line service records, inspection reports and preliminary orders.

TESTING:

Elevator service provider shall provide **all** required testing on **all** hydraulic elevators, as required by the State of California, at no additional charge. The testing shall be covered during business hours. The elevators shall individually be out of service during the testing.

Any additional billing as a result of vandalism, misuse/damage by others, work not covered under the terms of this order shall be approved in writing PRIOR to commencement of the work.